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Book Reviews

BOOK REVIEWS

Declaratory Judgments. By EDWIN BORCHARD.[1] 2d ed. Cleveland: Banks-Baldwin Law Publishing Co. 1941. Pp. xxxvii, 1152.

The fortunes of war alone have not delayed the preparation of this review. A student of a field naturally hesitates in reviewing its monumental work. Even the most thorough professor of Evidence or Contracts would approach with trepidation the reviewing of Wigmore or Williston. The difficulty is even more pronounced here where the author and the field are almost synonymous. Just as statutory interpleader *is* Chafee, declaratory judgment *is* Borchard. As the moving spirit in the extension of the declaratory principle, *i.e.*, the conclusive determination of "the pre-existing rights of the litigants without the appendage of any coercive decree," from the fragmentary scope to which common law and equity alike had confined it to a general procedural tool for the establishment of a larger measure of justice among men, Professor Borchard's articulation of this process has, since the publication of the first edition, had a most profound influence. This has been especially so since the work is in the Wigmore tradition—not merely a cyclopedia of case law, but a comprehensive, tightly reasoned analysis of all the ramifications of the subject.

When the first edition was prepared the declaratory judgment was fairly well established in the states and was just emerging relatively unscathed from a bath of fire in the federal courts. In the seven years which have elapsed between editions the device can truly be said to have reached maturity. Its usefulness has meanwhile proved itself with respect to almost every type of substantive right, and with a few exceptions—notably in Pennsylvania and Maryland[2]—broad interpretation has permitted the effective operation of the remedy. Hence a second edition was particularly pertinent. That the collection of cases is brought up to date is of course convenient; but the profession is especially fortunate to have the benefit at this time of Professor Borchard's reanalysis of the field.

And a reanalysis it is. It has not been just a matter of renovating footnotes. There are seven entirely new chapters, everyone of them on important topics: Jurisdiction, Parties, Taxation, Public Officers, Insurance Policies, Patents, and the Civil Adjudication of "Penal" Legislation. There has been added a collection of forms, based for the most part on adjudicated language. The old chapters show evidence of having been thought through and recast in the light of interim developments.

That they also be interesting is probably too much to ask of law books which are thorough and complete. And the practicing lawyer, alert to the possibilities of the declaratory judgment remedy, is glad enough to have in well organized form Professor Borchard's thoughts and collections of material. Here, he has the windfall of interesting reading as well. Any lawyer who is sensitive

[1]Hotchkiss Professor of Law, Yale University; co-draftsman of the Uniform Declaratory Judgments Act and of federal and state acts and rules.

[2]See pp. 318 *et seq.*

at all to the role of law in society will find this volume (except for a few technical sections) worthy of his attention beyond *ad hoc* needs. This is due in part to the fact that the work is free from the mechanical outlook from which so many procedural manuals—admittedly useful—often suffer; in part to an eye-inviting typography and make-up (the volume reminds one of a limited edition of, say, Boccaccio); and in part to the breadth of the author's scholarship. With respect to the latter, I do not happen to be familiar with Professor Borchard's views on post-war issues, but it is apparent that as to legal sources he is no isolationist. Indeed, the "practical" lawyer, while conceding the value of the English, Canadian, Australian, and New Zealand cases, which would otherwise be virtually inaccessible, may feel that the references to German, Balkan, and Indian cases are "globaloney."

While favoring such wide coverage of authorities, I wish that in some instances more attention had been given to the differences of context in which declaratory judgment problems arise in different systems of law. For example, in ruling on the availability of declaratory judgment against administrative officers or between agencies, the courts are naturally affected by such broad considerations as their view as to the relation of the citizen to his government, or narrower matters such as the method of administrative review available (as to which in the case of British, federal, and state systems there are serious differences). The federal courts have put many hobbles (perhaps too many) on declaratory relief against public officers which have little recognition in the state courts; for example, the requirement of the exhaustion of administrative remedies is a considerably stronger doctrine in the federal courts.

There is one persistent problem in suits against public officers which deserves more attention in what is otherwise a thoroughgoing chapter on Parties —the question of the indispensability of the superior officer in a suit against a subordinate. While this matter is by no means exclusively a declaratory judgment question, it is a frequent problem in declaratory judgment actions against officers; and Professor Borchard's analysis of the problem might have helped clarify a picture which the courts have steadily been obfuscating.

When this volume first came off the press, it appeared desirable that more attention be devoted in it to the application of the declaratory remedy in tax cases in the federal courts.[3] But that need has abated since the Supreme Court in *Great Lakes Dredge & Dock Co. v. Huffman*[4] has more or less cleared the waters.

Thoughtful reading of law books, except when compelled by direct professional necessity, is hardly to be expected in these times. Yet we must remember, in the heat of the world conflict, that efforts toward a decent procedure all tend to make more real the objectives for which the Nation is fighting. And, in particular, the wider availability of a workable declaratory judg-

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[3] See, however, pp. 367, 234, and 828.
[4] — U. S. —, 63 Sup. Ct. 1070 (1943).

ment procedure is an essential aspect of the attainment of one of the Four Freedoms—Freedom from Fear.

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Washington, D. C.

Federal Taxes on Corporations 1942-43. By ROBERT H. MONTGOMERY. New York: The Ronald Press Company. 1943. 2 vols. Pp. xii, 1056: xii, 981.

Mr. Robert Montgomery's annual treatises on federal taxes, the first of which was published, I believe, in 1917, have become almost as reliable a time guide as the solar system. These treatises have been of excellent quality and have uniformly reflected the long experience of Mr. Montgomery and his associates in the field of federal taxation and in the art of compiling and restating the general principles established by the law, the Treasury Department regulations, and court decisions. Lawyers, accountants, and other persons required to struggle with the intricacies of the law of federal income taxation should be deeply grateful to Mr. Montgomery for his perseverance. Perhaps of all the possible reviewers of Mr. Montgomery's work, the writer of this review is most aware of the terrific amount of laborious work required in editing a competent treatise on federal taxes.

Mr. Montgomery's 1942-43 edition is limited to federal taxes on corporations, excluding individuals, and is issued in two volumes. The use of a duplicate preface and of separate indices to decisions, treasury rulings, statutes, regulations, and general indices would indicate that the volumes cover unrelated matters, but such is not the case. One volume deals with "Tax Determination and Returns" and the other with "Gross Income and Deductions." The two books together take up a little over 2,000 pages. In method, treatment, and citation, the books follow the pattern of Montgomery's Handbooks of prior years. For example, this edition contains substantially the same number of pages as the single volume book written and published by Mr. Montgomery a decade ago.

The task of holding the subject of federal income taxes (and other selected federal taxes) within the physical limit of 2,000 pages is a difficult one. Under the "Handbook" method of treatment, it is necessary that the discussion of general principles be either subordinated or omitted. There is in Mr. Montgomery's work but a very limited statement of the rules of statutory construction (although he specifically recognizes that "In many cases construction of our tax laws turns upon a single word or punctuation mark"), of principles controlling the determination of fair market value, the extremely important concept of the equivalent of cash doctrine, principles of estoppel, election, and *res judicata,* the applicability of local property rules, and the doctrine of corporate entity. The handbook method also makes it often neces-

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sary to search the cited decisions to ascertain the fundamental concepts which support the indicated conclusion. For example, although the significant decisions (prior to the date of publication) dealing with stock dividends are cited, there is no adequate discussion of the theory which controls the recognition of gain on the receipt of a dividend in stock of the issuing corporation.

Certain of these omissions might be partially compensated for by the incorporation of a more compendious subject index. For example, it might be possible for the user to work out various examples illustrating the equivalent of cash concept by use of a detailed subject index, but the term, "equivalent of cash," is not even used in the subject index of either volume.

The "Handbook" treatment also makes it necessary to restrict the discussion to the statute as it stands at present, without a discussion, for the most part, of the law controlling tax liability for years prior to 1942 and without development of the legislative history and the various changes in the statute which have taken place from time to time.

Perhaps these criticisms are largely matters of personal preference since it is Mr. Montgomery's intention, as stated in his preface, to "hit only the high spots." This, the 1942-43 edition does, and does extremely well. No tax book is perfect, and it is too much to expect that two individuals would do a treatise alike. It is much easier to write a review than the book itself. The best antidote for anyone who thinks otherwise is to try both.

If you have current tax problems, you will undoubtedly want Montgomery's 1942-43 edition in your library. There is much more time and skill incorporated into the two volumes than you individually pay for.

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New York, New York

New World Constitutional Harmony: A Pan-Americanadian Panorama. By GEORGE JAFFIN. New York: The Columbia Law Review. 1942. Pp. 53.

The contents of this little volume first appeared in the April 1942 issue of the *Columbia Law Review* (Vol. XLII, No. 4). According to the publisher's foreword, it is to be the first of several essays, all part of a commendable long-range policy of contributing to a broader understanding of the legal and constitutional institutions and ideals common to the nations of the Western Hemisphere.

The announced purpose of this initial essay is to provide a comparative study of Western Hemisphere nations' constitutional guarantees of private rights. As respects such guarantees it is the author's contention that the United States, Canada, and the republics of Romance America have basically similar institutions resulting in part from the fact that the Constitution of the United States served so many of the latter states as a model. During the past century, however, little effort has been made to nourish and extend this

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community of interest in constitutional liberties and their enforcement. North American scholars, particularly, says Mr. Jaffin, have failed to realize the improvements which Latin American states have made upon the model furnished by the Philadelphia instrument.

By way of illustrating these improvements the author cites the inclusion of various economic and social welfare guarantees in the Uruguayan and other constitutions south of the Rio Grande and the absence of that type of provision in the bill of rights of the United States Constitution. Further evidence of progress beyond the standard set by the Philadelphia instrument is to be noted, the author alleges, in the machinery which our Latin neighbors have provided to vindicate and maintain constitutional rights granted individuals when such rights are in jeopardy. He notes particularly the *recurso de inconstitucionalidad,* prevalent in Cuba and other Latin American republics, the Mexican *amparo,* and the Colombian *acción pública* and *acción popular.* The distinguishing features of all this machinery are the provision for a special tribunal to hear questions of constitutional right *per se* and the privilege of direct access to such tribunals granted the individual when a specific right is in jeopardy. In the United States, on the other hand, judicial review of constitutional rights is still merely incidental to the disposition of general litigation in the ordinary courts.

As an enterprise in scholarship the essay is rather disappointing. One of the reasons for this disappointment is the author's failure to supplement his examination of mere constitutional phraseology with at least a superficial examination of constitutional practice. Juridical formulas, paper guarantees, and the elaborate mechanisms detailed in written constitutions are undoubtedly important and reveal much concerning a nation's ideals and the direction which its institutions are taking; but they are largely meaningless, even to the jurist, unless supplemented with some inquiry into actual constitutional behavior. In a comparative study such as this is ostensibly intended to be, failure to allude more generously to actual practice may give the casual reader distorted and entirely unacceptable ideas as to the relative effectiveness of judicial review in the United States or as to the security afforded rights in Great Britain where there is no judicial review of acts of Parliament.

The author's excursion into the current discussion about the form of proposed regional federations or unions of states is still another reason for this reviewer's dissatisfaction with his scholarly performance. Mr. Jaffin attempts to refute Mr. Streit's ideas of Anglo-American unity and the rather vague suggestions for a trans-Atlantic union of "Hispanic states" which occasionally emanate from the perfervid imaginations of General Franco's propaganda ministry. It is an interesting excursion and the opinions expressed may be important; but it requires some thirteen pages in a volume already too limited in scope to do justice to the theme to which the author's labors are ostensibly dedicated. Preoccupation with this essentially political issue, moreover, colors the entire essay and suggests throughout that the author is primarily interested in pleading for a cause rather than in conducting a dispassionate scholarly investigation.

In all likelihood it is this same zeal for the cause of American Hemispheric unity which is responsible for occasional statements in the text which even this reviewer feels called upon to challenge. On page 14, Mr. Jaffin declares that "in undertaking comparative constitutional studies the first habit to be overcome is that of American constitutional isolation." In the next sentence he says that "ever since the Constitution and the Bill of Rights were adopted 150 years ago, it has been assumed that the American Constitution is the last word simply because it was the first word on the modern subject of constitutional democracy." It may be that the author intends that these statements be limited to American observation of Latin American constitutional experience in which case they might have some justification; but in that case they should have been carefully qualified. As they stand they constitute an indictment that can hardly be maintained; for the fact of the matter is that no national body of scholars anywhere have studied the constitutional systems of countries other than their own more assiduously than have American experts in comparative public law, government, and administration.

Another interesting paragraph with which this reviewer is compelled to take issue occurs on page 11 in which Mr. Jaffin implies that the French Revolution was a failure and that the American constitutional ideas did not succeed in crossing the Atlantic in the 19th century except in one or two isolated and unimportant cases. He goes on to say that "had the French Revolution succeeded, Europe might have undergone the constitutional transformation of the Americas during the 19th century. Instead of a Constitution, came a Little Corporal; Waterloo was followed by the Congress of Vienna, the Holy Alliance, the German Confederation and the creation of the German Empire by Bismarck." The implications of this amazing, condensed survey of the political and constitutional evolution of Europe in the 19th century will cause more than one prominent historian to wonder about the correctness of both his facts and his conclusions; and the compilers of the dozen or more written Constitutions which France formulated after the fall of the Bastille will feel definitely superfluous.

The nub of the matter appears to be that Mr. Jaffin was more interested in submitting a brief for the cause of hemispheric solidarity than in writing the comparative study of constitutional guarantees in the Americas which his publishers announced he would write. The cause is a good one and this reviewer shares the author's enthusiasm in a measure. Moreover, since other essays are to follow on the same subject of Pan-American, or as the author insists, Pan-Americanadian constitutional and legal ideas, it may well be that this initial essay will have performed a useful role. It has at least demonstrated that there is a prodigious amount of work to be done by legal scholars on both sides of the Rio Grande, and that the product of their scholarship might aid immensely in furthering hemispheric understanding and possibly provide enduring institutional foundations for the political unity of the Americas.

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Photographic Evidence: Preparation and Presentation. By CHARLES C. SCOTT. Kansas City, Missouri: Vernon Law Book Company. 1942. Pp. xxxii, 922.

" . . . all knowledge purveys to the law, and from the domains of every art and science it draws the weapons by which it discovers truth and confounds error."[1]

The history of the camera in court discredits the popular belief that the judicial mind is slow to accept innovations. But twenty years after Talbot and Daguerre first made public their discoveries[2] and nearly a half century before fully corrected lenses and plates of general utility made photography reliable and generally available, an American appellate court case[3] declared photographs to be admissible in evidence when relevant and when properly verified. Thenceforward pictures of one species or another have played an important role in the judicial process. More often they have been in the foreground. Sometimes they have been in the background, but nearly always they have been there. Accordingly it is of interest that not until that one hundred third year of the science and art of photography did there appear this first handbook with regard to its relation to legal matters and its place in courts of justice. The estimable Mr. Osborn has dealt thoroughly with the field of handwriting and general documentary evidence and its photographic aspects;[4] and there have appeared from time to time works on ballistics and fingerprinting, necessarily treating the photographic problems involved. But there seems heretofore to have been no comprehensive manual of photography for evidentiary purposes nor an extensive compilation of case law with respect thereto.

It is appropriate that one who is both lawyer and photographer should essay this first such volume. An ethical and adequate husbanding of the rights of his client obligates the practicing attorney to use every weapon at his command "to discover truth and confound error." The advent of the photograph and the commonness of its appearance in court[5] place upon him a duty to acquaint himself with the possibilities of use of pictorial evidence. It is not enough, though it is essential, to know the law with regard to the admissibility of a photograph—its competence, its materiality, its relevance. One must know also whether the photograph in question is a fair representation of its subject. Only when he has ascertained that every photograph intended for use as evidence reproduces the object photographed with the highest degree of fidelity of which the photographic process is capable has

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[1]Commonwealth v. Roller, 100 Pa. Super. Ct. 125 (1930). Quoted in the preface to Mr. Scott's book.

[2]1839.

[3]Luco v. United States, 23 How. 515 (U. S. 1859).

[4]OSBORN, QUESTIONED DOCUMENTS (2d ed. 1929); OSBORN, THE PROBLEM OF PROOF (1926).

[5]According to the author, ". . . in nearly half of today's cases photographic evidence forms an important part of the proof upon which the rights of litigants are determined." p. 2.

he properly represented his client. The average non-photographer, uninitiated as he is into the relatively simple terminology of the photographic science,[6] is, in every instance in which photographic evidence plays a part, simply incapable of serving his client as he ought. Apparently with this in mind, Mr. Scott first draws upon his experience as a legal photographer to present a thoroughgoing manual of preparation of photographic evidence, and then, in Part II, turns his attention to a classification and exposition of what he believes to be "all of the cases, state and federal, involving the use and admissibility of photographs as evidence."[7] That lawyer who is familiar with the principles and processes set forth in Part I is in a position not only to prepare properly his own evidence but also to subject to intelligent scrutiny the photographs of the opposition. Especially helpful are illustrations of the proper procedure for verification of evidence photographs and suggested questions for use in examining witnesses of the opposition with respect to a photograph in issue.

One hundred eighty-six full page reproductions of photographs illustrate the text and serve well to point up many of the author's arguments. For example, there is a series of three photographs of the same skid mark, one reasonably accurate and two exaggerating and minimizing amazingly the length of the mark. Accompanying each photograph is a picture of the position of the camera used to obtain it and a statement of the type lens used. The steepness of steps, the seriousness of an obstruction at an intersection, the depth of a pavement defect—these and numerous other items are photographed properly and improperly to illustrate how to prepare accurate pictures and to detect those incorrectly taken.

Included also are substantial chapters on medicolegal pictures, disputed documents, ballistics, and fingerprints.

Comes then a discussion of "all of the cases" involving the use and admissibility of photographs in evidence. Presumably the author's system of classification is a result of much labor and experimentation inasmuch as there is no predecessor in the field, acceptable or otherwise, on whom to lean and from whose errors to benefit. Classification-wise, the result is excellent. If the resulting style sometimes lacks that sparkle and excellence found in the writings of those who depend upon compilers to gather material and who may therefore give much attention to composition, it is nevertheless clear and readable. The author breaks no lances for pet theories but rather seems to be interested primarily in expounding the law as it is. In so doing, he makes effective use of quotations from and summaries of court decisions.[8] The extraordinary size and weight of the volume are due not to prolixity of the author but to the unfortunate decision of the publishers to use for the entire thousand page volume the same heavy gloss paper used for the illustrations.

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[6]The terms are relatively familiar but not generally understood. *E.g.*, lens speed, focal length, chromatic aberration, contrast filter, halation. The volume contains a substantial and understandable glossary of technical terms.

[7]Preface, p. vi.

[8]The summaries, fortunately, are more than publishers' case headnotes.

Because the book appears to have court room utility, a lighter, thinner volume would have been far more desirable.

At least one reviewer has expressed the opinion that to laud a work generally and vaguely is to play traitor to the reviewer's craft.[9] Further he has viewed with apparent disapproval the type of reviewer who picks "multitudinous minor flaws in the work of a greater man." Seeking an honest middle ground, I feel the urge to point out what seems to me to be a substantial omission from the instant volume. The lawyer who makes increasingly effective and extensive use of pictures, as Mr. Scott ably advocates, must from time to time be confronted by problems as to the propriety of the pictures taken by himself or by an expert employed by him. How far may he go in taking pictures of unwilling subjects? Is a picture of a "disabled" plaintiff engaged in vigorous activity made secretly by a trespasser legitimate? Admissible in evidence? Grounds for an action for invasion of the right of privacy? These and similarly obvious questions find no place in this volume. Although it is by no means beyond dispute that such a discussion should have been included, particularly in the first work in the field, I nevertheless should like to have seen a brief treatment of these problems.

Finally, of immeasurable assistance in the use of the volume is its thorough index. It is a practical book, which will find its way onto the desk of and into the courtroom with many a practicing lawyer.

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Principles of Private International Law. By ARTHUR NUSSBAUM. New York: Oxford University Press. 1943. Pp. xvi, 288.

The author of this book was for some years Professor of Law in the University of Berlin, but was led by recent political events to come to this country in 1933, where he became Visiting Research Professor of Public Law in Columbia University. The jacket of the book tells us that not only does Professor Nussbaum write of his subject against a civil law background, but that he is (or was in Germany) "a leader in the movement towards legal realism"; and the author himself states in the Introduction that his approach is "realistic." We must hasten to add that he emphatically disassociates himself from the so-called "legal realists" of America, of whom he very obviously does not approve. Of this, more later. As to the scope and purpose of the book: its small size—288 not very large pages, including index and table of cases—shows at once that in no way is it a comprehensive treatise on the conflict of laws. Apparently the author has been stimulated by his experience of the last eight or nine years in familiarizing himself with Anglo-American ideas and judicial decisions to re-examine his own views, which were form-

[9]Lyman P. Wilson, in his review of PROSSER, HANDBOOK OF THE LAW OF TORTS (1941), (1941) 27 CORNELL L. Q. 159.

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ulated primarily on the basis of a civil law background. And so, he tells us in the Introduction, "Many views, previously formed, were re-examined . . . and adapted to wider horizons. A new picture of the whole gradually took shape in my mind. This volume tries to reproduce it in terms of American law."

Since the treatment of each topic is so brief, and—to quote again from the author—"no exhaustive discussion" has been undertaken, the value of the book for the practitioner, the judge, and the advanced student of the subject will be limited chiefly to the suggestion of new points of view. For beginning students it will doubtless be helpful in widening their intellectual outlook and in presenting brief critical surveys of such difficult topics as "qualification" and "renvoi."

Part I of the book, containing some 66 pages, deals with the general nature and scope of the conflict of laws—the author prefers the title "Private International Law"—and the history of the various schools of thought upon the subject, both in civil law countries and Anglo-American jurisdictions. In dealing with the "Vested-Right Theory" the author does not sufficiently emphasize the influence of Dicey's adoption of that theory, especially as to its effects in inducing English courts to recognize the renvoi doctrine. Nor does he bring out clearly that Professor Beale, the leading sponsor of the theory in America, dumps it completely overboard when the pinch comes, in order to avoid the renvoi. The same is true of the *Restatement*: it is logically incoherent and inconsistent in rejecting renvoi in most cases and at the same time claiming to base its rules upon the (or a) vested-rights theory.

In Part II, which is entitled "The Choice-of-Law Rule" and occupies about 114 pages, the author deals with Qualification; Renvoi; Domicil and Nationality; Formalities of Transactions; and the various theories concerning the choice of law to determine the validity and consequences of contracts. He criticizes adversely as inadequate the "place of contracting" theory of Professor Beale and the *Restatement*, and expresses the view that "there are good reasons for the strong appeal which the intent theory evidently exerts upon the courts." The reviewer is of course upon record as sharing these views. Especially helpful is the author's brief discussion of the logical difficulties of the *Restatement* and Professor Beale in explaining their allocation of power between the law of the place of contracting and that of the place of performance. (pp. 173-174).

Part III is entitled "Procedural Questions" and occupies the remainder of the book. It deals first of all with burden of proof and the general distinction between "substance" and "procedure." In discussing my article on that subject—now Chapter VI of *The Logical and Legal Bases of the Conflict of Laws*—Professor Nussbaum in all good faith ascribes to me views I have never held or expressed. Not only does he suggest that I have "underrated the juridical value of the distinction" between "substance" and "procedure"; he concludes that "basically" I have "attacked the whole distinction as unfounded," though, "for the sake of convenience" I make "some concessions towards tolerating the use of the term [terms?]." (pp. 187-188). One might as

well say that when the great biologist, T. H. Morgan, suggested that the word "species" might have one meaning for a taxonomist, a somewhat different meaning for an evolutionist, and perhaps still a third for a geneticist, he had thereby rejected the "species" category as useless and attacked it as wholly unfounded. Nothing could be farther from the truth. So, if I were to note that one "color" in the spectrum fades off by imperceptible degrees into another, and that no precise "line" can be found which separates one from the other, and had added that very likely I might therefore draw the "line" between the two colors at different points for different purposes, no one could fairly conclude that I had attacked the color classification in question as useless or unfounded. In my article I did my best to caution the reader against inferences of the kind Professor Nussbaum has drawn by quoting from a distinguished physical scientist, as follows: "I once more express the hope that in attacking the infallibility of categories I have not seemed to intimate that they are the less to be respected, because they are not absolute."[1]

The differences on questions of this kind between the approach of the learned author and myself are apparently of a somewhat fundamental nature and a review is not the place to attempt to elucidate them in detail. Suffice it to say that Professor Nussbaum is apparently satisfied to carry on his discussions in terms of orthodox methods, which at one point he calls "seasoned methods." (p. 37). These methods include, among other things, an assumption that certain fundamental terms such as "norms" and "normative," "legal right," "concept," *etc.*, already have a sufficiently clear meaning, so that we may carry on our discussions and criticize each other's theories without further analysis and definition. My own assumption, on the contrary, is that all these terms are highly ambiguous and need careful analysis and definition before we can proceed with intelligent and intelligible discussion and criticism. Consequently, I find Professor Nussbaum's criticism of the so-called "local law theory"—first enunciated by the reviewer in 1923—unconvincing: he has failed to analyze or define the term "legal right" so that I know just what he means by his criticisms. For like reasons I find many of the learned author's critical discussions of other theories inadequate and unsatisfactory.[2] Fortunately this is not true in all cases. For example, his discussion of the unfortunate attempt of the *Restatement* and Professor Beale to coordinate what they call "legislative jurisdiction" with judicial jurisdiction is especially helpful. (See especially pp. 28-29). The book is on the whole a welcome addition to the literature on the conflict of laws. Not least useful are the portions of Part III which deal with Jurisdiction,

[1]See THE LOGICAL AND LEGAL BASES OF THE CONFLICT OF LAWS, p. 162; and note the "Supplementary Remarks, 1942," pp. 182-193, in further elucidation of my views. T. H. Morgan's discussion of the word "species" will be found on p. 163; and other illustrations of the problem of language and of classification will be found on pp. 184-185.

[2]For further discussion, see my *Unpublished Chapter of the Logical and Legal Bases of the Conflict of Laws,* recently printed both in (1943) 37 ILL. L. REV. 418, and in (1943) 21 CANADIAN BAR REV. 249, and the "postscript" to the same specifically referring to Professor Nussbaums's views.

Foreign Judgments, and Proof of Foreign Law.

There is a table of cases and an index. The latter for some reason does not as a rule list the names of writers whose works have been referred to and discussed. One finds references to Bartolus but not to Beale; to D'Argentré but not to Dicey; to Huber but not to Goodrich or Lorenzen.

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